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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX JR., M.D.,

Plaintiff,

vs.

ALTA BATES SUMMIT MEDICAL  
CENTER,

Defendants.

Case No. C 07-2486 WHA

**PLAINTIFF'S MOTION IN LIMINE  
NO. 4 TO EXCLUDE TESTIMONY  
OF FOREST JUNOD, M.D.;  
DECLARATION OF RACHEL  
SATER**

**Trial Date: June 2, 2008  
Dept: Ctrm. 9, 19<sup>th</sup> Floor  
Judge: Hon. William H. Alsup**

Plaintiff Coyness L. Ennix, Jr. ("Dr. Ennix") moves to exclude testimony of Forest Junod M.D. ABSMC designated Dr. Junod to testify regarding alleged patient care issues related to surgeries Dr. Ennix performed at the Alta Bates campus in 2002. Dr. Junod's produced a report ("Junod Report") that was submitted to ABSMC in the course of Dr. Ennix's peer review; however, Dr. Junod himself did not testify before the AHC or MEC. Therefore, ABSMC did not consider any testimony from Dr. Junod during the challenged peer review, with the exception of those opinions expressed in the Junod report. Accordingly, the only matter to which Dr. Junod

1 could testify with any relevance to this suit is that the Junod Report accurately reflects his  
2 opinions. Any other matters to which Dr. Junod might testify were not before ABSMC during  
3 the challenged peer review, and therefore have no probative value regarding ABSMC's  
4 motivation or the veracity of its proffered justification of protecting "patient safety." If such  
5 testimony has any probative value, it is outweighed by the potential prejudice, confusion, and  
6 waste of time.

7 Therefore, the Court should exclude Dr. Junod's testimony as irrelevant.

#### 8 STATEMENT OF FACTS

9 Dr. Ennix claims that ABSMC discriminated against him based on his race in violation of  
10 42 U.S.C. § 1981 in a peer review process conducted at the Summit campus. In its initial  
11 disclosures, ABSMC stated that it would call Dr. Junod as a witness, asserting that Dr. Junod  
12 "has knowledge as an outside reviewer of patient care issues arising in several surgeries Plaintiff  
13 performed at the Alta Bates campus in 2002, as set forth more fully in his report dated November  
14 14, 2003 which was provided by the Alta Bates Medical Staff to the Summit Medical Staff on  
15 December 18, 2003. (See Sater Decl., ¶ 2, Exhibit A, at 6:12-16.) The Junod Report—which  
16 was provided to the Summit campus before it had been vetted by Alta Bates campus—addressed  
17 systemic issues at the Alta Bates campus stemming from the drop in volume of cardiac surgeries  
18 conducted at that campus, which ultimately led, at Dr. Ennix's urging, to the closing of the  
19 cardiac surgery program there. (Sater Decl., ¶ 3, Exhibit B.) Dr. Ennix was the sole cardiac  
20 surgeon operating at the Alta Bates campus during the time period examined by Dr. Junod. At  
21 one point, one member of ABSMC cited the Junod Report as one justification for pursuing  
22 adverse actions against Dr. Ennix, but ABSMC never investigated the Junod Report or Dr.  
23 Ennix's performance at the Alta Bates campus. To Plaintiff's knowledge, Dr. Junod did not take  
24 part in the peer review process other than by way of his report. (Sater Decl., ¶ 4, Exhibit C.)

#### 25 ARGUMENT

26 The sole issue in this case is whether race was a factor in ABSMC's peer review actions  
27 against Dr. Ennix that nearly ruined his career as a cardiac surgeon. This Court should exclude  
28



DECLARATION OF RACHEL J. SATER

I, Rachel J. Sater, declare:

1. I am an attorney licensed to practice law in the State of California and in this Court. I am an attorney at Moscone, Emblidge & Quadra, LLP, counsel of record for the Plaintiff.

2. Attached hereto as Exhibit A is a true and correct copy of relevant portions of ABSMC's initial disclosures in this case.

3. Attached hereto as Exhibit B are true and correct copies of a December 18, 2003 letter form John G. Rosenberg to Annette Schaieb; November 25, 2004, letter from John Edelen to Lamont Paxton, both of which were identified in Plaintiff's initial disclosures.

4. I am informed and believe that Dr. Junod did not participate in Dr. Ennix's peer review except by way of the Junod Report. Attached as Exhibit C are excerpts from the deposition of ABSMC's Chief of Staff Dr. Isenberg, stating that ABSMC did virtually nothing to follow-up on the report.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Dated: April 29, 2008

/s/  
Rachel J. Sater

EXHIBIT C

1  
2 15 Q. Let me show you what we marked this morning at  
3 16 Dr. Steven Stanten's deposition as Exhibit 1059.

4 17 Can you tell me if that's the transmittal  
5 18 letter that came with the Junod report when you first  
6 19 became aware of the Junod report?

7 20 A. This looks like it, yes.

8 21 Q. Okay. And are you -- do you recall, when you  
9 22 received it, that it stated that at Alta Bates, they  
10 23 made no representation about the Junod report's  
11 24 accuracy, credibility or reliability?

12 25 A. Yes.

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13 1 Q. Now, that's a letter addressed to Annette  
14 2 Shaieb. Is that how do you pronounce her name?

15 3 A. Shaieb.

16 4 Q. Did you receive it, the letter and the report,  
17 5 from Dr. Shaieb, or did you receive it directly from  
18 6 Alta Bates or some other way?

19 7 A. Dr. Shaieb brought it to the officers  
20 8 committee meeting, which was held the last Tuesday of  
21 9 every month, and shared it with the officers. And said,  
22 10 you know, just so you are aware of this. That was it.

23 11 Q. Okay. After receiving the Junod report, what  
24 12 did you do, if anything, to investigate Dr. Ennix's  
25 13 patient care activities at the Alta Bates campus?

26 14 A. At any time?

27 15 Q. Yes.

28 16 A. After the minimally invasive cases arose, I  
17 then pulled out the Junod report and reviewed it. I

1 18 then contacted both Drs. Rosenberg and Kunitz --

2 19 Q. Could you spell it for the record?

3 20 A. K-u-n-i-t-z, and R-o-s-e-n-b-e-r-g.

4 21 -- to see if they were willing to share more  
5 22 information. Dr. Kunitz provided a lot of verbal  
6 23 things, but nothing in writing. And Dr. Rosenberg  
7 24 similarly said the concerns we had were expressed in the  
8 25 Junod letter. We haven't gone any further to

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9 1 investigate them or process them because Dr. Ennix isn't  
10 2 practicing here anymore. And so we left that to you,  
11 3 where you could get a better handle on his practice,  
12 4 because he's working in your campus exclusively now.

13 5 Q. And did you do anything after that to  
14 6 investigate the credibility or reliability of the Junod  
15 7 report in terms of its analysis of cardiac surgery at  
16 8 the Alta Bates campus?

17 9 A. We asked -- I again asked Dr. Kunitz for any  
18 10 written documentation. And my recollection is the only  
19 11 document that was provided was a summary from a peer  
20 12 review committee meeting at Ashby that I think Dr. Ennix  
21 13 attended, where some concerns had been raised. And I  
22 14 think this may have been the meeting that then prompted  
23 15 the Junod report to be requested.

24 16 That was the only written document that we  
25 17 ever obtained. We did not pull the primary records,  
26 18 have them reviewed.

27 19 Q. Did you do anything else?

28 20 A. No.

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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14

15 COYNESS L. ENNIX, JR., M.D.,

16 Plaintiff,

17 v.  
18

19 ALTA BATES SUMMIT MEDICAL CENTER,  
20 Defendant.  
21

CASE NO. C 07-2486 WHA

**DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION IN LIMINE  
NO. 4 TO EXCLUDE TESTIMONY  
OF FOREST JUNOD, M.D.**

**DATE:** May 19, 2008  
**TIME:** 2:00 p.m.  
**DEPT:** Ctrm. 9, 19th Floor  
**JUDGE:** Hon. William H. Alsup

**COMPLAINT FILED:** May 9, 2007  
**TRIAL DATE:** June 2, 2008

1 In making its decision to institute Plaintiff's peer review, Defendant relied  
 2 upon, *inter alia*, a report prepared by Dr. Forrest Junod. Plaintiff asks that the Court  
 3 exclude the testimony of Dr. Junod with the exception of specific testimony confirming  
 4 the conclusions contained in his report. However, the relevance of Dr. Junod's  
 5 testimony is not so narrow. For example, Dr. Junod should be allowed to testify  
 6 regarding the factual circumstances underlying the transmission of the report to Dr.  
 7 Isenberg. Also relevant is the connection between the Alta Bates Medical Staff and the  
 8 Summit Medical Staff, which had a contractual obligation to cross-share relevant peer  
 9 review information. All of this information is directly relevant because it was considered  
 10 by the relevant decision-makers. Moreover, Dr. Junod's testimony is required to rebut  
 11 Plaintiff's repeated claims that he "championed the cause of consolidating cardiac  
 12 surgeries" between the two campuses. This claim, made repeatedly and under oath by  
 13 Plaintiff, is simply not true. Rather, Plaintiff was under peer review scrutiny by the Alta  
 14 Bates Medical Staff prior to coming under scrutiny by the Summit Medical Staff.  
 15 Accordingly, the Court should deny Plaintiff's Motion in Limine No. 4.

16 DATED: May 9, 2008

KAUFF MCCLAIN & MCGUIRE LLP

18 By:   
 19 ALEX HERNAEZ

20 Attorneys for Defendant  
 21 ALTA BATES SUMMIT MEDICAL  
 22 CENTER  
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